MT LEGISLATIVE HISTORY

Chapter 291 1989

Bill H _____ (S) 64 Original bill & hist. ✓ C

H. Committee on Local Government

Hearing Date(s) Mar 02 ✓ C

_____ ___ C

_____ ___ C

_____ ___ C

Date Out Mar 02 ✓ C

S. Committee on Business & Industry

Hearing Date(s) Jan 09 ✓ C

Jan 11 ✓ C

_____ ___ C

_____ ___ C

Jan 11 ✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 64

INTRODUCED BY HALLIGAN

IN THE SENATE

JANUARY 4, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
JANUARY 12, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 13, 1989	PRINTING REPORT.
JANUARY 14, 1989	SECOND READING, DO PASS.
JANUARY 16, 1989	ENGROSSING REPORT.
JANUARY 17, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
FEBRUARY 20, 1989	FIRST READING.
MARCH 3, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 6, 1989	SECOND READING, CONCURRED IN.
MARCH 7, 1989	THIRD READING, CONCURRED IN. AYES, 81; NOES, 11.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 11, 1989	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 14, 1989	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 64

INTRODUCED BY Halligan

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE NOTICE OF A RIGHT TO CLAIM A CONSTRUCTION LIEN FILED WITH THE CLERK AND RECORDER FOR THE PURPOSE OF PUBLIC NOTICE LAPSES AFTER 1 YEAR UNLESS A CONTINUATION OF THE NOTICE IS FILED; AND AMENDING SECTION 71-3-531, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim a lien required -- exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at his request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of his right to claim a lien to the contracting owner in order to claim a lien.

(3) This notice must be given no later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to him. Notice by certified mail is effective on the date the notice is mailed.

(5) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy must be filed no later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from

LC 0100/01

INTRODUCED BILL
SB64

the date of filing. Such notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder shall expunge the notice from the public record when it lapses.

(c) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time he files his lien.

(6) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description of the real estate being improved, sufficient to identify it; and

(b) the name and address of the contracting owner."

Section 2. Transition provision. Notwithstanding [section 1], notice of a right to claim a lien that is filed with the clerk and recorder before October 1, 1989, lapses unless a continuation of the notice is filed before April 1, 1990.

-End-

List of Testifying Proponents and What Group They Represent:

Norris Nichols - Administration of Motor Fuels

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Norris Nichols stated, "What this bill does, is give the person who is selling gasoline to farmers and others who are entitled to a refund, eligibility for a continuous license. The continuous license is issued the same as for a gasoline distributer or diesel dealer until cancelled for cause."

Questions From Committee Members: None

Closing by Sponsor: Senator Devlin simply stated, "I close."

DISPOSITION OF SENATE BILL 5

Discussion: Chairman Thayer pointed out that there was no controversy on SB 5. All we have to do is attach the amendment, making the effective date July 1st 1989.

Amendments and Votes: Senator McLane moved the amendment to DO PASS. Senator Lynch seconded the amendment and it carried. (SEE EXHIBIT #4)

Recommendation and Vote: Senator Lynch made a motion that SB 5 DO PASS AS AMENDED. Senator McLane seconded the motion and SB 5 PASSED AS AMENDED.

HEARING ON SENATE BILL 64

Presentation and Opening Statement by Sponsor: Senator Halligan, District 29, said, "Last session the Judiciary Committee heard the major changes the Legislature made in the Mechanics' Liens' Law area. This bill is the result of an interim commission study, on which Senator Thayer and I served. What this bill represents is simply a fine tuning of the major changes we made last time around.

"We have set up a notice of lien liability which is separate from a lien. This protects the homeowner and people who normally don't deal with the lien area and makes them aware of the possible liens that can be filed against their property.

"The bottom of page 2, provides for the handling of the notice when everything has been satisfied. The length of time the lien notice is supposed to stay filed at the Clerk and Recorders office is also clarified. We felt one year was a reasonable period of time for projects of this type. After one year's period of time, the notice of lien liability would be expunged. This may not be the appropriate word here. There is also an opportunity for a continuation of that one year period printed on page 3, lines 3-12."

List of Testifying Proponents and What Group They Represent:

Riley Johnson - Western Building Material Association
Mike Sather - Manager of United Building Center, Helena, MT.
Cort Harrington - The Montana County Association of Clerk and Recorders

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Riley Johnson stated, "I have a letter to Senator Thayer from Irvin E. Dellinger, which I would like to read at this time." (Exhibit #1) In part of the letter it states, "An issue overlooked was some way to remove the rights to claim a lien, filed with the Clerk and Recorders office. Montana Building Material dealers feel that Senate Bill 6 is a vehicle which should serve this purpose. We ask the committee to pass Senate Bill #64 as proposed."

Mike Sather, manager of United Building Center, Helena Montana, said he was there on behalf of UBC and Western Building Materials Association. He said they concurred with everything Riley had stated, and felt it was very important to have the period of one year. He urged the passage of the bill as it stood, with one year.

Cort Harrington assured the committee of the support of the Association of Clerk and Recorders. "They support the concept of this bill, however, there are a couple of proposed amendments we suggest. First, on page 3,

lines 4-6, there is a reference to the requirement that the clerk and recorder expunge the record of the lien. An Attorney Generals opinion, Number 100, defines expunge as requiring a physical act of destroying all evidence of the lien. Actually, the files may need to contain the history of the lien, or an intent to file one." (SEE EXHIBIT #2)

"Our second concern would be addressed to page 3, lines 9-12, referring to an unexpired continuation notice. Nothing in the statute now addresses a continuation. The Clerk and Recorders would suggest including the date of the original notice being filed, the original filing number, date of continuation notice, the owners reclaiming right, and who got the notice." (Exhibit #3)

Questions From Committee Members: Senator Lynch asked Mr. Johnson if he had any objections to the proposed amendments since he had urged passage of the bill without them. Mr. Johnson answered that he had no objections.

Closing by Sponsor: Senator Halligan said he closed, thank you.

DISPOSITION OF SENATE BILL 64

Discussion: Chairman Thayer suggested action on SB 64 be considered after Mary had time to make the proposed changes. More than likely, she will have had time to prepare by our next hearing on Wednesday.

HEARING ON SENATE BILL 4

Presentation and Opening Statement by Sponsor: Senator Hager, Senate District 48, said the bill was requested by the Department of Revenue. "The section of law referred to in the bill is section one of the definitions. What we are looking for is a definition of bulk storage. Bulk storage refers to 50-70-304, in the part of the law requiring bonding. The bond in need is to secure the compliance of this part, in payment of any and all taxes, interest, and penalties due or which become due here after."

"The section further states they want a $500.00 fee from any special fuel user who possesses special fuel in bulk storage in this state on which the tax has not been paid."

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/9/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN"J.D."LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

EXHIBIT NO. 1
DATE 1/9/89
BILL NO. SB 64

Alaska • Idaho
Montana • Oregon
Washington

Western Building Material Association

909 Lakeridge Drive S.W. • Olympia, WA 98502-6009
P.O. BOX 1699 • OLYMPIA, WASHINGTON 98507-1699 • (206) 943-3054
FAX (206) 943-1219

EARL NELSON
TWIN FALLS, IDAHO

Vice Presidents
TAD SCHARPENBERG
EUGENE, OREGON

BILL WOOD
OLYMPIA, WASHINGTON

Executive Director
CHARLES E. LINK
OLYMPIA, WASHINGTON

January 9, 1989

Senator ~~Bruce Crippen~~ Gene Thayer
Chrm Senate ~~Judiciary~~ Business Committee
State Capital
Helena, Montana

Dear Senator ~~Crippen~~ Thayer and Members of Committee:

One issue you have before you this morning is Senate Bill #64, "Notice of Right To Claim A Lien Removal From Records".

Because of a prior committment I am unable to appear and have asked Riley Johnson to speak in my behalf.

Last Legislative Session Senate Bill # 20 "An Act. To Generally Revise The Laws Relating to Mechanics Liens" was passed and signed by Governor Schwinden. An issue overlooked was someway to remove the "Rights To Claim A Lien" filed with the clerk & recorders office.

Senate Bill # 64 would cause the "notice" to lapse at the end of one year unless renewed. Most homes take 4 - 5 months to complete with larger homes taking more time. With time for financial closing one year should be ample. Any less time would cause added time and expense as materialmen, sub-contractors would have to file renewals or file liens to protect their lien rights. This would also created added work and expense for the clerk &

Montana building material dealers feel that Senate Bill #64 is a Vehicle which should serve this purpose.

We ask the committee to pass Senate Bill #64 as proposed.

Sincerely,

Irvin E. Dellinger

Mike Sather
WBC

EXHIBIT NO. 2
DATE 1/9/89
BILL NO. SB64
SENATE BUSINESS & INDUSTRY
EXHIBIT NO.
DATE

VOLUME NO. 42 OPINION NO. 100

COURTS - Destruction of records following court-ordered expungement;

CRIMINAL INFORMATION DISSEMINATION - Records subject to expungement;

CRIMINAL LAW AND PROCEDURE - Expungement of criminal records following a deferred imposition of sentence;

SENTENCE - Requirements of expungement following a deferred imposition of sentence;

MONTANA CODE ANNOTATED - Section 46-18-204.

HELD: When a deferred imposition of sentence results in a dismissal of charges the expungement of the defendant's record mandated by section 46-18-204, MCA, requires that all documentation and physical or automated entries concerning the expunged offense be physically destroyed or obliterated.

20 July 1988

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion of the meaning of the words "expunge" and "record" in the deferred imposition of sentence statute, § 46-18-204, MCA. That statute in its entirety reads as follows:

> Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. Upon dismissal of the charges, the court shall send an order directing the department of justice to expunge the defendant's record. The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged. [Emphasis supplied.]

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 1/19/89
BILL NO. SB64

On page 3 lines 4 through 6 the clerk and recorder is to "expunge the notice from the public record"

42 AGO 100 deals with what expunge means.

Expunge is not necessary and it would create an unnecessary burden on the Clerk and Recorder

Suggest deleting the last sentence of (5)(b).

P 3 lines 7 through 12 refers to an "unexpired continuation notice"

§ 71-3-532 contains the requirement of a "notice of right to claim a lien" There is ~~not~~ nothing in the bill which says that a "continuation notice" is authorized or what the notice should contain. Suggest that the notice include at the very least.

1. Date of the notice being continued
2. Original filing no.
3. Date of continuation notice
4. Owner
5. Person claiming right
7. When is it filed

DATE 1-9-89

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Carl Farrington	Clerk and Recorders	SB 64	✓ with amendments	
Norris Nichols	Dept. of Revenue	S.B. 5	✓	
" "	" "	S.B. 4	✓	
Riley Johnson	Western Bldg. Mat. Dealers	SB 64	✓	
Mike Sather	✓ ✓ — —	SB 64	✓	

consumers in Montana.

List of Testifying Opponents and What Group They Represent:
None

Questions From Committee Members: Sen. McLane asked if this bill provided protection for the consumers. Sen. Regan stated she didn't feel any bill could provide protection, but it at least, provided an avenue for the Insurance Commissioner to more closely examine such products.

Closing by Sponsor: Sen. Regan said she closed the hearing.

DISPOSITION OF SENATE BILL 76

Discussion: None

Amendments and Votes: Senator Lynch moved the statement of intent of SB 76 DO PASS.
Senator McLane seconded.
Question.
Motion carried unanimously.

Recommendation and Vote:
Senator Lynch moved SB 76 DO PASS.
Seconded by Senator McLane.
Question.
Motion carried unanimously.

DISPOSITION OF SENATE BILL 4

Discussion: Mary McCue, Legislative Council, explained the two amendments under consideration. Sen. Noble asked for clarification on the minimum container size of bulk storage. Senator Hager explained the 50 gallon minimum was set in the desire to include 55 gallon drums as bulk storage.

Amendments and Votes: Sen. Hager moved to amend SB 4 as follows (SEE EXHIBIT #3). Senator Lynch seconded. Question called. Amendment carried.

Recommendation and Vote: Sen. Lynch moved SB 4 be PASSED AS AMENDED. Sen. Hager seconded. Question. Motion carried unanimously.

DISPOSITION OF SENATE BILL 64

Discussion: Mary McCue, Legislative Council reviewed the

amendments as to the language change necessary and contents of the continuation statement. She disclosed having spoken with Cort Harrington concerning his testimony on the continuation statement needs. She further stated, Riley Johnson was present during her telephone conversation with Cort and this amendment is what Mr. Johnson recommended.

Amendments and Votes: Senator Lynch moved the amendments (SEE EXHIBIT #4).
Senator Weeding seconded. Question. Amendments carried.

Recommendation and Vote: Senator Williams moved SB 64 DO PASS AS AMENDED. Seconded by Senator Lynch. Question. Motion carried unanimously.

ADJOURNMENT

Adjournment At: 10:34 a.m.

SENATOR GENE THAYER, Chairman

GT/ct

senmin.111

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/11/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN"J.D."LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 11, 1999

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 64 (first reading copy -- white), respectfully report that SB 64 be amended and as so amended do pass:

1. Page 3, line 5.
Strike: "shall expunge"
Insert: "may remove"

2. Page 3, following line 6.
Insert: "(c) The continuation statement must include:
(i) the clerk and recorder's file number of the notice; and
(ii) the date on which the notice originally was filed."

Renumber: subsequent subsection

AND AS SO AMENDED DO PASS

Signed: _____
Gene Thayer, Chairman

EXHIBIT NO. 7
DATE 1/11/89
BILL NO. SB64

STANDING COMMITTEE REPORT

January 11, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 64 (first reading copy -- white), respectfully report that SB 64 be amended and as so amended do pass:

1. Page 3, line 5.
Strike: "shall expunge"
Insert: "may remove"

2. Page 3, following line 6.
Insert: "(c) The continuation statement must include:
(i) the clerk and recorder's file number of the notice; and
(ii) the date on which the notice originally was filed."

Renumber: subsequent subsection

AND AS SO AMENDED DO PASS

Signed: _____
Gene Thayer, Chairman

scrsb64.11

Closing by Sponsor: Sen. Aklestad asked that Executive Action be expedited because of the March 9 deadline. Rep. Iverson will carry the bill on the House floor.

DISPOSITION OF SENATE BILL 457

Motion: Rep. Gould moved SB 457 BE CONCURRED IN. Rep. Good seconded.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion that SB 457 BE CONCURRED IN CARRIED unanimously.

HEARING ON SENATE 64

Presentation and Opening Statement by Sponsor:

Sen. Mike Halligan, District 29, stated that this bill is a separate provision of the lien law that allows for a notice to homeowners of a possibility of a lien being filed against their home. This bill is a fine tuning of the lien law. This does not involve the filing of the lien but the notice and that notice only lasts a year before a lien must be filed, another notice filed or the Clerk and Recorder removes the lapsed notice. This bill provides for the removal of that notice.

Testifying Proponents and Who They Represent:

Riley Johnson, Western Building Materials Association
Cort Harrington, Montana Clerk and Recorders

Proponent Testimony:

Riley Johnson stated that this is a housekeeping bill and that the statute has worked well for his organization.

Cort Harrington stated that the Clerk and Recorders support this bill but request an amendment on page 3, line 11 that the notice of continuance also include the name of the person who was given the original notice. This would help the Clerk in finding the original notice. Mr. Johnson concurs with this amendment.

Testifying Opponents and Who They Represent: None

Opponent Testimony: None

Questions From Committee Members: None

Closing by Sponsor: Senator Halligan concurs with the amendment. Rep. Mercer will carry the bill on the House floor for Sen. Halligan.

DISPOSITION OF SENATE BILL 64

Motion: Rep. Gould moved SB 64 BE CONCURRED IN. Rep. Wyatt seconded.

Discussion: Rep. Good asked for an explanation of a mechanics' lien. Chairman Darko, Rep. Gould and Lee explained plus explained that this bill does not deal with the filing of the lien but only with the notice of a possibility of a lien being filed.

Amendments, Discussion, and Votes: Lee explained the amendment request by Mr. Harrington. Rep. Gould moved to amend SB 64 suggested by Mr. Harrington. Rep. Stickney seconded. The motion CARRIED unanimously.

Recommendation and Vote: Rep. Gould moved SB 64 BE CONCURRED IN AS AMENDED. Rep. Guthrie seconded. The motion CARRIED unanimously.

HEARING ON SENATE BILL 69

Presentation and Opening Statement by Sponsor:

Senator Pinsoneault, District 27, stated that this bill allows a political subdivision to be billed by the Clerk and Recorder rather than having to pay cash for each transaction. The subdivision must set up an account with the Clerk. An amendment is requested to enable agencies to still receive certain services free that were free to them in the past.

Testifying Proponents and Who They Represent:

Chuck Stearns, Finance Director and City Clerk, Missoula

Proponent Testimony:

Chuck Stearns stated that he requested the bill because state law presently does not allow county offices to bill the city for certain services. They are required to pay cash for each transaction. The amendment is needed so that they will not have to begin paying for services that were previously rendered without charge since the city and county often cooperate in providing copies to each other without cost.

Testifying Opponents and Who They Represent: None

Opponent Testimony: None

DAILY ROLL CALL

LOCAL GOVERNMENT COMMITTEE

DATE 3/2/89

NAME	PRESENT	ABSENT	EXCUSED
BROOKE, VIVIAN	X		
BROWN, DAVE	Yaeth		X
BROWN, JAN	X		
DARKO, PAULA	X		
GOOD, SUSAN	X		
GOULD, BUDD	X		
GUTHRIE, BERT	X		
HANSEN, STELLA JEAN	X		
HOFFMAN, ROBERT	X		
JOHNSON, JOHN	X		
McDONOUGH, MARY	X		
NELSON, THOMAS	X		
REHBERG, DENNIS	X		
STICKNEY, JESSICA	X		
WALLIN, NORM	X		
WYATT, DIANA	X		

Form CS-30A
Rev. 1985

STANDING COMMITTEE REPORT

March 3, 1989

Mr. Speaker: We, the committee on Local Government report that SENATE BILL 64 (REFERENCE copy -- blue) be concurred in as amended .

Signed: _____
Paula Darko, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 3, line 9.
Strike: "AND"

2. Page 3, line 10.
Strike: "."
Insert: "; and"

3. Page 3.
Following: line 10
Insert: "(iii) the name of the person to whom the original notice was given."

VISITORS' REGISTER

Local Government COMMITTEE

BILL NO. SB 64 DATE 3/2/89

SPONSOR Hallegan

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Riley Johnson	Western Building Materials Assn.	X	
Carl Harrington	Ass. of Clerk & Rec	✓	
Jim BARTLETT	Lake Co. Clerk & Rec	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33